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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/980,623

12/05/2001

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R0108T

8159

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07/31/2007

EXAMINER

FLANIGAN, ALLEN J

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

07/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/980,623

Applicant(s)

SAKURADA ET AL.

Examiner

Allen J. Flanigan

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(a) as being anticipated by Tanaka et al.

Applicants have amended claim 1 to include the recitation of claim 5 previously presented. Labeling the claimed first and second heat exchangers "condenser" and "radiator" adds nothing structurally to the claims. Such recitations concern the intended use of the claimed device (what fluid applicant intends to flow through the tubes in use) and at best require the prior art be inherently capable of such use. Clearly, the exchanger tubes 5, 6 of Tanaka et al. are equally capable of carrying refrigerant or engine cooling water therethrough.

Claim 3 is rejected under 35 U.S.C. 102(a) as anticipated by Tanaka et al. or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tanaka et al. in view of Fukuoka et al. and Yamamoto et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Claim 4 is rejected under 35 U.S.C. 102(a) as anticipated by Tanaka et al. or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tanaka et al. in view of Sugimoto et al.

Please see the comments made in regard to the above rejection in the previous Office action.

Applicant's arguments filed 6/29/2006 have been fully considered but they are not persuasive.

As noted above, the fact that Tanaka et al. indicate that they intend to have refrigerant pass through the larger height tubes 6 rather than the reduced height tubes 5 is of no moment. The law of anticipation does not require that the reference teach what the applicants' disclosure teaches . . . it is only necessary that the claims 'read on' something disclosed in the reference. See ***Kalman v. Kimberly Clark*, 227 U.S.P.Q. 577, 588.**

Regarding claim 4, applicant points out that the prior art has a different motivation or rationale for minimizing the spacing between the cores. A *prima facie* case of obviousness does not require the same rationale or motivation to combine teachings/modify a reference as the applicants'. See **MPEP 2144; *KSR v. Teleflex Inc*, 82 U.S.P.Q.2d 1385** ("any need or problem known in the field of endeavor at the time of the invention and addressed by the patent can provide a reason for combining the elements in the manner claimed").

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The additionally cited references are intervening references with dates prior to the PCT priority document international filing date, but after the PCT claimed priority date.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (571) 272-4910. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Allen J. Flanigan  
Primary Examiner  
Art Unit 3744

AJF